



# State of Utah

## UTAH SENTENCING COMMISSION

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**John T. Nielsen**

Chairman

**Edward S. McConkie**

Director

### MINUTES

#### Sentencing Commission Mtg.

#### April 5, 2000

**Next Meeting: Wednesday, May 3, 2000 in Room #403  
State Capitol, Noon to 1:30**

#### **Present:**

Neal Hendrickson  
John Hill  
Pete Haun  
Camille Anthony  
Michael Sibbett  
David Bateman  
Paul Boyden  
Sam Dawson  
Pete Suazo  
Robert Yeates

Pat Nolan  
Steven Kelly  
David Mower  
Russ Van Vleet  
Gary Dalton  
Julie Holbrook  
Tyrone Medley  
John T. Nielsen  
Reed Richards  
Greg Curtis

#### **Visitors/Staff**

Cliff Butter  
Chris Mitchell  
Ed McConkie  
Mike Haddon  
Carma Parker  
Marvin Dodge  
Dave Walsh  
Jennifer Yim  
Rod Decker

#### **Welcome and Approval of Minutes**

Mr. Nielsen welcomed everyone present. Judge Yeates motioned to approve the minutes, Pat Nolan seconded, and it passed unanimously.

Mr. Nielsen congratulated Michael Sibbett and invited everyone to attend the swearing in of Mr. Sibbett as the Chairman of the Utah Board of Pardons and Parole.

#### **General Items of Business**

##### **Upcoming Sentencing Commission Meetings**

Mr. McConkie also welcomed everyone present. The Sentencing Commission will continue to meet on the first Wednesday of every month at noon in room 403 of the State Capitol Building. Mr. McConkie asked everyone to mark those dates on their calenders.

##### **Supplemental Research for the Race & Ethnic Fairness Task Force**

Mike Haddon, Research Director, updated the Commission on the efforts to compile supplemental research for the Race & Ethnic Fairness Task Force. He reported that the research team is still in the process of researching the race and ethnicity data surrounding sentencing including the guidelines recommendation, the PSI recommendation, and the actual sentence. He mentioned that the research team has run into some data questions and they will be meeting with Chris Mitchell, Cliff Butter, Russ Van Vleet and Steve Harrison to try to resolve these issues.

## **2000 Legislative Report**

Ed McConkie reported on the Sentencing Commission bills. H. B. 58 *Penalties for Crime Victim Reparations Fraudulent Claims* did not have any problems, it passed and has been signed by the Governor. Mr. McConkie thanked Rep. Hendrickson for sponsoring the bill.

HB 56 *Child Abuse Homicide*, sponsored by Rep. Snow, made the definition of “child” consistent in child abuse, child abuse homicide, aggravated murder and felony murder. It passed and has been signed by the Governor.

HB 144 *Sentencing Enhancements*, sponsored by Rep. Curtis, rewrote the gang enhancement which had been struck down in part by State v. Lopes. This bill requires other enhancements, clarifies the indeterminate sentencing ranges, and complies with Lopes by requiring the trier of fact to make the necessary findings beyond a reasonable doubt. Also, included in the bill is a clarified application of the dangerous weapons enhancement. HB 144 became a part of the House Republican crime package and easily passed. It was signed by the Governor.

SB 14 *Hate Crimes* did not have similar success. Sponsored by Sen. Suazo, the bill did proceed further than past versions and even passed the Senate with quite a bit of momentum. However, it failed to get out of the House Judiciary Standing Committee and was sent back to the House Rules Committee. Despite the efforts from several Sentencing Commission members, SB 14 never made it to the full House floor. Sen. Suazo mentioned that he is willing to try again, next legislative session. He planned to do more preparatory work to assure there is adequate funding for any possible fiscal impact and suggested having the bill start in both the Senate and the House.

Camille Anthony stressed the Sentencing Commission should focus time on the fiscal impact and have the answers and the cost, from beginning to end, well in advance. Mr. McConkie reported that he would have this issue on an upcoming agenda. Mr. Boyden moved to approve (in essence re-endorse) SB 14 in substance. This motion passed unanimously. Sen. Suazo thanked Camille Anthony and Michael Sibbett for going the extra mile. The two worked with the Department of Corrections, addressing the fiscal issue and also tried to free SB 14 from the House Rules Committee.

Concerning other bills, not coming out of the Sentencing Commission, SB 153, a weapons bill, would have changed the penalty for violent misdemeanors from twelve months to thirteen months incarceration. This bill was withdrawn by Terry Spencer. SB 209 *DUI Amendments* passed after being amended to be consistent with indeterminate sentencing. HB 80 *Harboring a Fugitive* proposed a number of changes for harboring and obstruction of justice. It was amended significantly and passed in a satisfactory version.

## **Tobacco Settlement Funds**

Mr. McConkie reported that out of the recommended \$5 million for statewide expansion of Drug Court and the new Drug Board pilot project, \$2 million was funded for Drug Court and \$700,000 was funded for the Drug Board pilot project in Weber and Davis Counties.

**Final Recommendations from Utah Judicial Council’s Task Force on Racial and Ethnic Fairness in the Legal System.** Judge Medley introduced Jennifer Yim, Executive Director of the Task Force. Judge Medley reported on the extensive Task Force process that resulted in the findings

being considered by the Sentencing Commission. It had involved both qualitative and quantitative analyses reviewing the entire spectrum of both the juvenile and adult justice systems.

Judge Medley reported that the real purpose of the discussion today is for Ms. Yim, Judge Medley and other members of the task force to get the Sentencing Commission's impression, comments and questions regarding the Task Force as a whole and, specifically, discussion on the response drafted by Mr. McConkie. The Utah Judicial Council's Task Force is in the process of creating a final report and is still conducting additional research. The comments will be taken to the task force in preparation of the final report.

Judge Medley began with specific findings concerning the use of a risk assessment in juvenile sentencing. Russ Van Vleet recommended that the Juvenile Justice Subcommittee, once again, review the Task Force's recommendation. The Subcommittee had previously argued against the proposed use of a risk assessment from the Legislative Auditor and, in the alternative, recommended that such instruments be limited to post-sentencing. Pat Nolan emphasized this position and urged the Commission to adopt it. Camille Anthony mentioned that the juvenile courts and Youth Corrections have spent a significant amount of assessment time on this issue. She suggested that those efforts should be considered by the Subcommittee as well.

Gary Dalton reported that in joint leadership meetings with the Courts, they have moved beyond the discussion of risk assessment to what is called Graduated Assessment Process. "Risk" is a narrow parameter of one of the elements that is involved with juvenile offenders. Mr. Dalton spoke for himself and Ray Wahl, Juvenile Court Administrator, saying that neither one of them would be in favor of using risk assessment to determine sentencing, but, rather, risk assessments should help determine placements after the sentence had been decided. Mr. Dalton then suggested that the Juvenile Justice Subcommittee invite Ron Oldroyd and Kit Enniss for a discussion of the Graduated Assessment Process. A longer discussion of risk assessments ensued including Pete Haun reminding the Commission that adult corrections was using an effective instrument.

It was proposed and agreed that the Commission form a smaller subgroup to review Mr. McConkie's responses to the Task Force recommendations, making sure they represent the Commission's views. Any of the Commission members that are interested in being on this subgroup should inform Mr. McConkie.